IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 5723 of 2005

Between:

1.M/s.Brigade Bar & Restaurant, IL-17, D.No.7-119/1,
Opp. CCMB, Habsiguda, Kapra Municipality, Ranga Reddy District,

rep.by its Licence Mr.B.Ravinder Reddy,

S/o.B.Venkat Reddy, R/o/Nacharam, Hyderabad.
2.M/s.S.S.R.Pleasant Bar & Restaurant IL-17, D.No.7-119/1 to 7,

Nacharam, Habsiguda, RR District rep., by its Licencee
G.Saritheswar Rao. S/o.Shyam Rao.

..... PETITIONERS

AND

1.The Prohibition & Excise Superintendent Ranga Reddy District

at Hyderabad.
2.The Commissioner of Prohibition & Excise Govt. of A.P., at Hyderabad.
3.The Prohibition & Excise Inspector, SHO., Excise Station Uppal,

R.R. District.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring Cr.No.6605/04/CPE/G1-1 and Cr.No.6605/04/ CPE/G1-2, dt.11/03/2005 of the 2nd respondent cancelling the licences of petitioners M/s. Brigade Bar & Restaurant and M/s. S.S.R. Pleasant Bar & Restaurant, Habsiguda, RR District as illegal, arbitrary, contrary to law and against principles of natural justice and further suspend the operation of Cr.No.6605/04/CPE/ G1-1 & Cr.No.6605/04/CPE/G1-1 & Cr.No.6605/04/CPE/Gr-2, dt.11/3/2005 of the 2nd respondent and pass such other order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.AMARNATH GOUD THODUPUNURI

Counsel for the Respondent Nos.1 to 3: G.P. FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following:

ORAL ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader for Prohibition and Excise, appearing on behalf of the respondents 1 to 3.

2. The grievance of the petitioners is that contrary to Rule-6 of the Andhra Pradesh Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993
(for brevity "the Rules 1993"), and the Rule-29 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970
(for brevity "the Rules 1970"), the second respondent-the Commissioner of Prohibition and Excise, Hyderabad, cancelled the licences of the petitioners-Bar and Restaurants.

3. As per the Rule 29 of the Rules 1970, in the limits of Municipal Corporations a distance of 50 metres shall be maintained between the bar and restaurant and educational institution recognized by the Government of Andhra Pradesh, places of public worship etc.

4. Rule 29 of the Rules 1970, which read thus:

> "**Restrictions on the grant of certain licences**:- (1) A licence in [Forms IL.17, IL.17A, IL.17B, (except for beer Pubs in boats run by A.P. Tourism Development Corporation Limited) IL.19, IL.20, IL21, IL22] involving consumption of liquor at the premises shall not be granted:

(i) .....

(ii) within 100 metres from educational institution recognized by the Government, places of public worship such as Temples registered by the Endowments Departments, Mosques registered with the Wakf Board Churches and Hospitals:

Provided that in the limits of Municipal Corporations the distance restriction mentioned above shall be 50 metres.

(iii) .....

(iv) .....

Explanation:- For purposes of clauses (ii) and (iii) the distance referred to therein shall be measured from the midpoint of the entrance of the proposed bar premises along the nearest path by which pedestrians ordinarily reach, to the midpoint of the nearest entrance of educational institution or a place of public worship or the entrance of the first house of the predominantly residential area, as the case may be."

5. From the above said Rule, it appears that the distance between the educational institution and the licensed premises, should be measured from the mid point of the entrance of the proposed bar premises along the nearest path by which pedestrians ordinarily reach, to the midpoint of the nearest entrance of educational institution.

6. It is informed by the learned Government Pleader for Prohibition & Excise that the mid point between the educational institution and the licensed premises, has to be taken into consideration, which is within the parameters prescribed by the Rules.

7. But, it is brought to the notice of this Court that a Division Bench of this Court while upholding the judgment of a learned single Judge of this Court, held that the distance has to be measured from the outer boundary of the campus of Osmania University, in Writ Appeal Nos.304 and 306 of 2004, dated 16-03-2004.

8. The campus is no other than the Osmania University campus. This issue

actually has been decided where the Osmania University itself is the party in Writ Appeal Nos.304 and 306 of 2004. Therefore, this Court has its own reservations about the maintainability of the present writ petition.

9. However, having regard to the principles laid down by the Division Bench of this Court, referred to supra, the present writ petition is devoid of merit and the same is liable to be dismissed.

10. Accordingly, the writ petition is dismissed at the stage of admission. However, the petitioners are at liberty to make an application to the respondents to measure the distance as held by the Division Bench of this Court in Writ Appeal Nos. 304 and 306 of 2004 and upon such verification of the distance, if it is found that the stipulated distance of 50 metres is in existence, the case of the petitioners may be considered. But, in the circumstances, there shall be no order as to costs.

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D.S.R. VARMA, J

24TH MARCH 2005

Note:

Issue CC in five days

(B/o)

ISN/KRK

ASSISTANT REGISTRAR

To:

1. The Prohibition & Excise Superintendent, Ranga Reddy District

at Hyderabad.

2.The Commissioner of Prohibition & Excise Govt. of A.P., at Hyderabad.
3.The Prohibition & Excise Inspector, S.H.O., Excise Station Uppal,

R.R. District.

4. Two CCs to G.P. for Prohibition & Excise, High Court Buildings, Hyderabad (OUT).

5.Two CD copies.